

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

GREGORY TYREE BROWN,  
  
Plaintiff,

v.

ELDON VAIL, et al,  
  
Defendants.

NO: 2:15-CV-0121-TOR

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS

BEFORE THE COURT is Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (ECF No. 16). This matter was submitted for consideration without oral argument. The Court—having reviewed the briefing, files, and record therein—is fully informed.

**BACKGROUND**

On March 29, 2015, Plaintiff Gregory Brown, a pro se prisoner currently housed at the Clallam Bay Corrections Center, commenced this action. ECF No. 1-1. In his First Amended Complaint, the operative pleading here, Brown alleges that

1 Defendants violated his federal and state constitutional rights when they  
2 confiscated and destroyed 55 of his personal photographs. ECF No. 5.

3 In the instant motion, Defendants move to dismiss Brown's First Amended  
4 Complaint, asserting that his claims are barred by the statute of limitations and the  
5 doctrine of res judicata. ECF No. 16. For the reasons discussed below, this Court  
6 grants Defendants' motion.

### 7 **FACTS**

8 On January 15, 2012, Defendants Derek Reeves and Dusty Rumsey, Airway  
9 Heights Correction Center ("AHCC") officials, confiscated 55 photographs from  
10 Brown's cell and destroyed them pursuant to DOC Policy 420.375. ECF No. 5 ¶¶  
11 11, 20, 23. Defendants Paul Duenich and Maggie Miller-Stout subsequently upheld  
12 the decision to confiscate and destroy the photographs. *Id.* ¶ 30.

13 On or about February 5, 2012, Brown submitted a grievance regarding the  
14 January 15 event. *Id.* ¶ 27. Shortly thereafter, the grievance coordinator instructed  
15 Brown that property confiscation issues need to be addressed through DOC's  
16 appeal process and directed Brown to submit an appeal to the prison's captain. *Id.*  
17 On or about February 8, 2012, Brown submitted his appeal to the prison's captain.  
18 *Id.* ¶ 28. Over two months later, the grievance coordinator instructed Brown to  
19 instead submit his appeal to the prison's superintendent. *Id.* ¶ 29.

1 On April 22, 2012, Brown submitted his appeal to the prison's  
2 superintendent. *Id.* Twenty-five days later, on May 17, 2012, Brown's appeal was  
3 denied. *Id.* ¶ 30.

4 On March 29, 2013, Brown commenced a suit against several DOC officials  
5 in the Eastern District of Washington. In his complaint, Brown asserted, among  
6 other allegations, that AHCC officials Reeves and Rumsey confiscated and  
7 destroyed his 55 personal photos on January 15, 2012, in violation of his  
8 procedural due process rights. *Brown v. Warner*, No. 2:13-cv-0130-RMP (E.D.  
9 Wash. filed Mar. 29, 2013) (ECF No. 4). On July 25, 2013, the court ruled that  
10 Reeves and Rumsey were improperly joined in the lawsuit, finding that a  
11 proceeding with unrelated claims against different defendants in a single suit  
12 violated Rule 18(a). *Id.* (ECF No. 7). The court dismissed these defendants without  
13 prejudice and advised Brown that he could proceed with his claims against these  
14 Defendants in a separate suit. *Id.*; see ECF No. 5 ¶¶ 34-35.

15 On June 30, 2014, in the Western District of Washington, Brown  
16 commenced another suit against all of the Defendants named in this action, save  
17 for Defendant Paul Duenich. In his complaint, Brown asserted, among other  
18 allegations, that AHCC officials Reeves and Rumsey confiscated and destroyed his  
19 55 personal photos on January 15, 2012, in violation of his due process and free  
20 speech rights. *Brown v. State of Washington*, 3:14-cv-5524-RJB (W.D. Wash. filed

1 June 30, 2014) (ECF No. 4). On December 8, 2014, the court instructed Brown to  
2 amend his complaint and specifically advised Brown not to include events that  
3 occurred in Eastern Washington. *Id.* (ECF No. 20); *see* ECF No. 5 ¶¶ 36-38.

4 On March 29, 2015, Brown commenced the instant action. See ECF No. 1-1.

## 5 DISCUSSION

### 6 A. Standard of Review

7 To avoid dismissal under Federal Rule of Civil Procedure 12(b)(6) for  
8 failure to state a claim, a plaintiff must allege “sufficient factual matter . . . to state  
9 a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
10 (2009). This standard “does not require ‘detailed factual allegations,’ but it  
11 demands more than an unadorned, the defendant-unlawfully-harmed-me  
12 accusation.” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555  
13 (2007)). “In conducting this review, [the court] accept[s] the factual allegations of  
14 the complaint as true and construe[s] them in the light most favorable to the  
15 plaintiff.” *AE ex rel Hernandez v. Cnty. of Tulare*, 666 F.3d 631, 636 (9th Cir.  
16 2012).

17 “A district court may dismiss a claim if the running of the statute is apparent  
18 on the face of the complaint.” *Cervantes v. Countrywide Home Loans, Inc.*, 656  
19 F.3d 1034, 1045 (9th Cir. 2011) (internal quotation marks and brackets omitted).  
20 “However, a district court may do so only if the assertions of the complaint read

1 with the required liberality, would not permit the plaintiff to prove that the statute  
2 was tolled.” *Id.*

### 3 **B. Section 1983 Claims**

#### 4 **1. Statute of Limitations**

5 Defendants contend Brown’s section 1983 claims, which arose from an  
6 incident that occurred on January 15, 2012, are barred by the applicable three-year  
7 statute of limitations on each claim. ECF No. 16. In response, Brown asserts that  
8 his claims are timely because the statute of limitations was tolled almost three  
9 hundred days. ECF No. 24 at 7-8.

10 The parties agree that the statute of limitations for a section 1983 action in  
11 Washington is three years. *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045,  
12 1058 (9th Cir. 2002) (citing RCW 4.16.080(2)). The parties also agree that  
13 Brown’s section 1983 claims accrued on January 15, 2012, when the AHCC  
14 officials confiscated and destroyed Brown’s photographs. *See TwoRivers v. Lewis*,  
15 174 F.3d 987, 991 (9th Cir. 1999) (“Under federal law, a claim accrues when the  
16 plaintiff knows or has reason to know of the injury which is the basis of the  
17 action.”).

18 Accordingly, absent any tolling, the statute of limitations ended on January  
19 15, 2015, which was 74 days before Brown filed his first complaint.

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## 2. Tolling

### a. Exhaustion of Administrative Remedies

First, Brown contends the statute of limitations was tolled while he pursued mandatory prison remedies between April 22, 2012, and May 17, 2012. ECF No. 24 at 6.

A prisoner may not proceed to federal court without first exhausting his administrative remedies. *McKinney v. Carey*, 311 F.3d 1198, 1200 (9th Cir. 2002) (per curiam). With this mandatory exhaustion rule, comes the corollary doctrine of tolling: “[T]he applicable statute of limitations must be tolled while a prisoner completes the mandatory exhaustion process.” *Brown v. Valoff*, 422 F.3d 926, 943 (9th Cir. 2005).

Here, according to the First Amended Complaint, Brown sent his appeal letter to the prison’s superintendent on April 22, 2012. ECF No. 5 ¶ 29. Although he attempted to start the exhaustion process in early February by first submitting a grievance and then submitting an appeal letter to the prison’s captain, this was not the proper procedure. *Id.* ¶¶ 27-29. On May 17, 2012, Brown’s appeal was denied. *Id.* ¶ 30. Accordingly, the 3-year statute of limitations was tolled 25 days while Brown completed the prison’s mandatory exhaustion process.

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1                   **b. Equitable Estoppel**

2           Second, Brown contends the statute of limitations was tolled an additional  
3 76 days because the grievance coordinator allegedly misrepresented that Brown  
4 should submit his appeal to the prison's captain and did not inform Brown of the  
5 correct procedure until over two months later. ECF No. 24 at 5-6.

6           “The doctrine of equitable estoppel, often referred to as fraudulent  
7 concealment, is based on the principle that a party should not be allowed to benefit  
8 from its own wrongdoing.” *Estate of Amaro v. City of Oakland*, 653 F.3d 808, 813  
9 (9th Cir. 2011) (internal quotation marks omitted). “The doctrine focuses primarily  
10 on the actions taken by the defendant in preventing a plaintiff from filing suit.” *Id.*  
11 (internal quotation marks omitted). Under federal law, the plaintiff must  
12 demonstrate the following elements of equitable estoppel: “(1) knowledge of the  
13 true facts by the party to be estopped, (2) intent to induce reliance or actions giving  
14 rise to a belief in that intent, (3) ignorance of the true facts by the relying party, and  
15 (4) detrimental reliance.” *Id.* (quoting *Bolt v. United States*, 944 F.2d 603, 609 (9th  
16 Cir. 1991)).

17           Here, construing Brown's First Amended Complaint with the required  
18 liberality, equitable estoppel does not apply. Even assuming that the AHCC  
19 grievance coordinator wrongfully advised Brown to submit his appeal to the  
20 captain on or about February 7, 2012, ECF No. 5 ¶ 27, Brown has failed to

1 demonstrate that he detrimentally relied on this misinformation. Two and a half  
2 months later, on April 22, 2012, the grievance coordinator correctly instructed  
3 Brown to submit his appeal to the prison's superintendent. *Id.* ¶ 29. On May 17,  
4 2012, Brown's appeal was denied, *id.* ¶ 30, leaving Brown over two years to  
5 pursue his claims in federal court. Accordingly, Brown did not rely on the  
6 grievance coordinator's erroneous instruction to his detriment: he was able to  
7 exhaust his administrative remedies well within the applicable statute of limitations  
8 and was not prevented from timely filing suit thereafter.<sup>1</sup>

9 **c. Equitable Tolling**

10 Finally, Brown asserts that the statute of limitations was tolled while his  
11 claims were pending in the Western District, the wrong venue. ECF No. 24 at 6-7.

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14 <sup>1</sup> To the extent it remains undecided after *Estate of Amaro v. City of Oakland*  
15 whether federal or state law estoppel principles govern, *see, e.g., Macy v. Howard*,  
16 584 Fed. App'x 427 (9th Cir. 2004) (applying Idaho's equitable estoppel law to  
17 plaintiff's section 1983 claim), Defendants are not estopped under either federal or  
18 state law principally because of the lack of injury to Plaintiff. *See Peterson v.*  
19 *Groves*, 111 Wash. App. 306, 310-11 (2002) (discussing estoppel elements under  
20 Washington law).



1 In Washington, courts may apply the doctrine of equitable tolling to allow a  
2 claim to proceed “when justice requires.” *Trotzer v. Vig*, 149 Wash.App. 594, 606-  
3 07 (2009). The doctrine “acts as an exception to the statute of limitations that  
4 should be used sparingly and does not extend broadly to allow claims to be raised  
5 except under narrow circumstances.” *In re Bonds*, 165 Wash.2d 135, 141 (2008)  
6 (en banc). “The one who asserts the doctrine of equitable tolling has the burden of  
7 proving each of the predicates for application of the doctrine.” *Trotzer*, 149  
8 Wash.App. at 607. “The predicates for equitable tolling are bad faith, deception, or  
9 false assurances by the defendant and the exercise of diligence by the plaintiff.” *Id.*  
10 (quoting *Millay v. Cam*, 135 Wash.2d 193, 206 (1998) (en banc)).

11 Here, construing Brown’s First Amended Complaint with the required  
12 liberality, this Court finds Brown has failed to demonstrate that equitable tolling  
13 should apply. Although Brown has sufficiently pled diligence—he filed his claims  
14 against Defendant in the Western District well within the applicable time period—  
15 he has failed to demonstrate some act of any Defendant that prevented him from  
16 timely filing suit. Indeed, Brown presents no explanation why, after the Western  
17 District ordered plaintiff to drop his Eastern District allegations on December 18,  
18 2014, Brown was unable to timely file suit in this district by February 9, 2015, the  
19 date the statute of limitations expired on his federal claims. Accordingly, Brown  
20 has failed to show that equitable tolling applies.

1 In conclusion, Brown's section 1983 claims are time-barred.

2 **C. State Constitutional Claims**

3 Brown asserts two claims under the Washington State Constitution,  
4 contending that Defendants violated his procedural due process and free speech  
5 rights. ECF No. 5 ¶¶ 42, 43. Brown seeks to enjoin DOC Policy 420.375, which  
6 allows the confiscation and destruction of an inmate's property, and for a Court  
7 order allowing prisoners to view the property, challenge the basis for its  
8 confiscation, and personally dispose of the contraband. *Id.* ¶ 44(b).<sup>2</sup>

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<sup>2</sup> Defendants move to dismiss these claims for failure to state a claim, asserting that  
11 the Washington State Constitution does not provide a private right of action. ECF  
12 No. 16 at 14. While Brown concedes that he cannot assert a claim for damages  
13 under the Washington State Constitution, he correctly asserts that the case law  
14 cited by Defendants concerns only claims for damages, not equitable relief. ECF  
15 No. 24; *see, e.g., Blinka v. Wash. State Bar. Ass'n*, 109 Wash. App. 575, 591  
16 (2001). Defendants also move to dismiss the entirety of the First Amended  
17 Complaint based on the doctrine of res judicata, ECF No. 16 at 10-13. Although  
18 Brown raised claims regarding confiscation and destruction of his photographs in  
19 two prior proceedings, these claims were improperly asserted in both actions. In  
20 the Eastern District, the court dismissed these claims without prejudice based on

1 A federal court has supplemental jurisdiction over pendent state law claims  
2 to the extent they are “so related to claims in the action within [the court’s] original  
3 jurisdiction that they form part of the same case or controversy.” 28 U.S.C. §  
4 1367(a). “A state law claim is part of the same case or controversy when it shares a  
5 ‘common nucleus of operative fact’ with the federal claims and the state and  
6 federal claims would normally be tried together.” *Bahrampour v. Lampert*, 356  
7 F.3d 969, 978 (9th Cir. 2004). Once the court acquires supplemental jurisdiction  
8 over state law claims, section 1367(c) provides that the court may decline to  
9 exercise jurisdiction if

10 (1) the claim raises a novel or complex issue of State law, (2) the  
11 claim substantially predominates over the claim or claims over which  
12 the district court has original jurisdiction, (3) the district court has  
13 dismissed all claims over which it has original jurisdiction, or (4) in  
14 exceptional circumstances, there are other compelling reasons for  
15 declining jurisdiction.

16 28 U.S.C. § 1367(c); *Dyack v. Commonwealth of N. Mariana Islands*, 317 F.3d  
17 1030, 1037 (9th Cir. 2003) (“In the absence of diversity jurisdiction, the district

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19 improper joinder. In the Western District, the court directed Brown to amend his  
20 pleading and omit these claims; however, nothing in the order prevented Brown  
from timely reasserting these claims in the proper venue.

1 court had discretion to decline to exercise supplemental jurisdiction over Dyack's  
2 state-law claims.").

3 Here, this Court declines to exercise its supplemental jurisdiction over these  
4 claims because this Court has dismissed Brown's federal claims over which it had  
5 original jurisdiction. Accordingly, these claims are dismissed without prejudice.

#### 6 **D. Conclusion**

7 This Court grants Defendants' motion to dismiss. Regarding Brown's  
8 federal claims, these claims are barred by the applicable three-year statute of  
9 limitations, and because amendment as to these claims would be futile, this Court  
10 finds leave to amend under Federal Rule of Civil Procedure 15 is not warranted  
11 here. *Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009) ("Dismissal without  
12 leave to amend is improper unless it is clear that the complaint could not be saved  
13 by any amendment."). Regarding Brown's state law claims, this Court declines to  
14 exercise supplemental jurisdiction over these claims in light of the dismissal of  
15 Brown's federal claims. Accordingly, Brown's First Amended Complaint is  
16 dismissed.

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1           **IT IS ORDERED:**

2           1. Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (ECF  
3 No. 16) is **GRANTED**.

4           2. Plaintiff's First Amended Complaint is **DISMISSED**. Plaintiff's federal  
5 law claims are dismissed with prejudice, and his state law claims are dismissed  
6 without prejudice.

7           The District Court Executive is directed to enter this Order, enter  
8 **JUDGMENT** for Defendants, provide copies to counsel and Plaintiff, and **close**  
9 the file.

10          **DATED** March 31, 2016.



12           *Thomas O. Rice*  
THOMAS O. RICE  
13 Chief United States District Judge